DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB98 1069-94

Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in Southwestern South Dakota

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The U.S. Fish and Wildlife Service, in cooperation with the U.S. Forest Service and the National Park Service, will release black-footed ferrets (*Mustela nigripes*) into the Conata Basin/Badlands Reintroduction Area in southwestern South Dakota. This reintroduction will implement a primary recovery action for this federally listed endangered species and will allow evaluation of release techniques.

Provided conditions are acceptable, surplus captive-raised black-footed ferrets will be released in 1994 and annually thereafter for several years or until a self-sustaining population is established. Releases will utilize and refine reintroduction techniques used at other reintroduction areas and, if fully successful, will establish a wild population within about 5 years. The Conata Basin/Badlands black-footed ferret population is designated as a nonessential experimental population in accordance with Section 10(j) of the Endangered Species Act of 1973, as amended. This population will be managed in accordance with the provisions of the accompanying special rule.

EFFECTIVE DATE: August 18, 1994.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the following Service offices:

—Regional Office, Ecological Services, 134 Union Boulevard, Lakewood, Colorado 80228, (303) 236–8189.

—South Dakota Field Office, Ecological Services, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501–5408, (605) 224–8693.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Naten (303) 236–8189 at the Regional Office address or Mr. Douglas Searls (605) 224–8693 at the South Dakota Field Office address above.

SUPPLEMENTARY INFORMATION:

Background

The background information included in this rule has been reduced from what was published in the proposed rule to reduce publishing costs. Please refer to the proposed rule published in the **Federal Register** on May 19, 1993 (58 FR 29176) for more detailed information.

The black-footed ferret (*Mustela nigripes*) is an endangered carnivore with a black face mask, black legs, and a black-tipped tail. It is nearly 60 cm (2 ft) long and weighs up to 1.1 kg (2.5 lbs). It is the only ferret native to North America.

Though the black-footed ferret was found over a wide area historically, it is difficult to make a conclusive statement on its historical abundance due to its nocturnal and secretive habits. The black-footed ferret's historical range includes 12 States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. There is prehistoric evidence of the black-footed ferret from the Yukon Territory, Canada, to New Mexico and Texas (Anderson et al. 1986). Although there are no specimen records for black-footed ferrets from Mexico, prairie dogs (*Cynomys* spp.) inhabit Chihuahua (Anderson 1972) and were present as far back as the late Pleistocene-Holocene Age (Messing 1986). Because black-footed ferrets depend almost exclusively on prairie dogs for food and shelter (Henderson et al. 1969; Forrest et al. 1985) and black-footed ferret range is coincident with that of prairie dogs (Anderson et al. 1986), it is probable that black-footed ferrets may have been historically endemic to northern Mexico.

Black-footed ferrets prey primarily on prairie dogs and use their burrows for shelter and denning. There are specimen records of black-footed ferrets from ranges of three species of prairie dogs: black-tailed prairie dogs (*Cynomys ludovicianus*), white-tailed prairie dogs (*Cynomys leucurus*), and Gunnison's prairie dogs (*Cynomys gunnisoni*) (Anderson et al. 1986).

Widespread poisoning of prairie dogs and agricultural cultivation of their habitat drastically reduced prairie dog abundance and distribution in the last century. Sylvatic plague, which may have been introduced to North America around the turn of the century, also decimated prairie dog populations, particularly in the southern portions of their range. The severe decline of prairie dogs resulted in a concomitant and near-fatal decline in black-footed ferrets, though the latter's decline may be partially attributable to other factors such as secondary poisoning from prairie dog toxicants or high susceptibility to canine distemper. The black-footed ferret was listed as an endangered species on March 11, 1967.

In 1964, a wild population of ferrets was discovered in South Dakota and was studied intensively for several years, but this population disappeared in the wild by 1974, its last member dying in captivity in 1979. Afterwards, some believed that the species was probably extinct, until another wild population was discovered near Meeteetse, Wyoming, in 1981. The Meeteetse population underwent a severe decline in 1985 and 1986 due to canine distemper, which is fatal to infected black-footed ferrets. Eighteen survivors were taken into captivity between 1986 and 1987 to prevent extinction and to serve as founder animals in a captive propagation program aimed at eventually reintroducing the species into the wild.

In 6 years, the captive population has increased from 18 to over 300 black-footed ferrets. In 1988, the single captive population was split into three separate captive subpopulations to avoid the possibility that a single catastrophic event could wipe out the entire known population. Two additional captive subpopulations were established in 1990, and one additional captive subpopulation was established in 1991 and again in 1992, making a total of seven captive subpopulations. A secure population of 200 breeding adults was achieved in 1991, allowing initiation of ferret reintroductions into the wild.

Section 10(j) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), allows the Fish and Wildlife Service (Service) to designate certain populations of federally listed species that are released into the wild as "experimental populations." The circumstances under which this designation can be applied are: (1) The population is wholly separate geographically from nonexperimental populations of the same species (e.g., the population is reintroduced outside the species' current range but within its historical range); and (2) the Service determines that the release will further the conservation of the species. This designation can increase the Service's flexibility to manage a reintroduced population because under section 10(j) an experimental population can be treated as a threatened species regardless of its designation elsewhere in its range, and, under section 4(d) of

the Act, the Service has greater discretion in developing management programs for threatened species than for endangered species.

Section 10(j) of the Act requires, when an experimental population is designated, that a determination be made by the Service whether that population is essential or nonessential to the continued existence of the species. Nonessential experimental populations located outside National Wildlife Refuge System or National Park System lands are treated, for purposes of section 7 of the Act, as if they are proposed for listing. Thus, only two provisions of section 7 would apply outside National Wildlife Refuge System and National Park System lands: section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species; and section 7(a)(4), which requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to insure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands. Activities undertaken on private lands are not affected by section 7 of the Act unless they are authorized, funded, or carried out by a Federal agency.

However, pursuant to section 7(a)(2), individual animals comprising the designated experimental population may be removed from an existing source or donor population only after it has been determined that such removal is not likely to jeopardize the continued existence of the species. Moreover, removal must be conducted under a permit issued in accordance with the requirements of 50 CFR 17.22.

Forty-nine black-footed ferrets were reintroduced as a nonessential experimental population to the Shirley Basin/Medicine Bow (Shirley Basin) site in Wyoming in September and October 1991. Subsequent surveys conducted during November 7–14, 1991, found nine individual ferrets. Snow surveys conducted during March 1992 revealed signs of six to eight black-footed ferrets. Spotlight surveys conducted during July and August 1992 confirmed the presence of a minimum of four adult black-footed ferrets and two litters. One litter contained two young, and the second litter contained four young black-footed ferrets. During September and October 1992, an additional 90 black-footed ferrets were released at the Shirley Basin site. Forty-eight ferrets were released at the Shirley Basin site in September and October 1993. Currently, the only known populations of black-footed ferrets are the experimental population at the Shirley Basin site and those animals in captivity.

In addition to this reintroduction, the Service and state wildlife agencies in 11 western states are identifying potential black-footed ferret reintroduction sites within the species' historical range. Potential reintroduction sites have been identified in Wyoming (two sites), Montana (one site), South Dakota (one site), Colorado (one site), Utah (one site), and Arizona (one site).

On May 19, 1993, the Service published a proposed rule in the **Federal Register** (58 FR 29176) to reintroduce black-footed ferrets into the Conata Basin/Badlands Reintroduction Area in southwestern South Dakota as a nonessential experimental population. This area is located in eastern Pennington County, South Dakota, and was historically occupied by black-footed ferrets. The Reintroduction Area is within the larger Experimental Population Area, which includes portions of Pennington, Jackson, and Shannon Counties. Numerous black-footed ferret surveys have been conducted in the Experimental Population Area and have not turned up any evidence of live black-footed ferrets. The latest physical evidence that black-footed ferrets occupied southwestern South Dakota occurred in 1974.

To the best of our knowledge, any reintroduced population of black-footed ferrets in the Experimental Population Area would be wholly separate and distinct from other black-footed ferret populations.

Conata Basin/Badlands Reintroduction Area: The Conata Basin/Badlands Reintroduction Area encompasses approximately 17,000 hectares (42,000 acres) of primarily Federal land administered either by the National Park Service (NPS) or the U.S. Forest Service (USFS). Mapping conducted in 1990 indicates that approximately 3,200 hectares (8,000 acres) of prairie dog towns exist at the Conata Basin/Badlands Reintroduction Area. Approximately, 3,000 hectares (7,400 acres) had prairie dog densities that would be considered good ferret habitat; the remaining hectares were recovering from previous control efforts. Using the method outlined in Biggins et al. (1991), this acreage has a present black-footed ferret habitat index of about 160. When additional parameters, such as spacial requirements, were incorporated into the indexing system, this area had a ferret habitat index of approximately 100.

Reintroduction and black-footed ferret management will occur in specifically delineated areas designated as the "Conata Basin/Badlands Reintroduction Area." The Reintroduction Area is centered within the larger Experimental Population Area which includes portions of eastern Pennington, western Jackson, and northern Shannon Counties. Any black-footed ferret occurring within the Experimental Population Area will have experimental status.

Specifics on the location and boundaries of the Conata Basin/Badlands Reintroduction Area and Experimental Population Area are provided in the map accompanying the special rule. Current plans are to begin releasing black-footed ferrets into a subportion of the Conata Basin/Badlands Reintroduction Area considered best for release and initial management. If reintroduction is successful, black-footed ferrets eventually will disperse from the initial Reintroduction Area. Black-footed ferrets may be released into other portions of the Conata Basin/Badlands Reintroduction Area at a later date.

Black-footed ferrets will be released into the Reintroduction Area only if biological conditions are suitable and an acceptable management framework has been developed. Reintroduction will be re-evaluated if one or more of the following conditions specified in the "Draft Cooperative Black-Footed Ferret Management Plan For The Conata Basin/Badlands Area In South Dakota" (USFWS, USFS, and NPS 1993) occur:

(1) Failure to maintain a black-footed ferret habitat rating index (Biggins et al. 1991) of at least 26 (i.e., carrying capacity for 40 adult black-footed ferrets) or a strong indication that such will be the case within 5 years.

(2) Failure to acquire or maintain a nonessential experimental population designation for the Reintroduction Area through the Federal rulemaking process.

(3) Wild black-footed ferret populations are discovered within the Experimental Population Area prior to the first breeding season following the first reintroduction.

(4) A significant number of cases of canine distemper or other diseases determined to be detrimental to black-footed ferrets is documented in any wild mammal in or near the Reintroduction Area within 6 months of the scheduled reintroduction.

(5) Fewer than 20 black-footed ferrets are available for the first release.

(6) Funding is not available to implement the reintroduction program.

Reintroduction protocol: In general, the reintroduction protocol will involve

releasing a minimum of 20 captive-raised black-footed ferrets in the first year of reintroduction and releasing ferrets annually thereafter, as needed, for 2–4 years or until a wild population is established. Captive animals selected for release will be as genetically redundant as possible with the gene pool in the captive breeding population; hence, any loss of released animals is unlikely to appreciably affect existing genetic diversity in the species. Moreover, because breeding black-footed ferrets in captivity is not a problem, any animals lost in the reintroduction effort could be replaced. To enhance genetic diversity in the reintroduced population, it may be necessary to release black-footed ferrets from other established, reintroduced populations (e.g., the Shirley Basin site).

Several strategies for releasing captive-raised black-footed ferrets will be utilized during the reintroduction: (1) Hard release with no pre-release conditioning (i.e., release without an acclimation period); (2) soft release (release with an acclimation period and gradual reduction in supplied food and shelter); and (3) pre-release conditioning in a quasi-natural environment followed by hard release (this technique may be used when sufficient numbers of black-footed ferrets are available). Ferrets will be released in September and October, when wild juvenile ferrets typically become independent and exhibit dispersal tendencies and are physically capable of killing prey, avoiding predators, and adjusting to environmental extremes.

The hard release with no pre-release conditioning will utilize neither release cages or any preconditioning in a contained prairie dog colony. Ferrets will be transported to the release site and held for a minimum of 12 hours to ensure general health. Subsequently, the ferrets will be released into the prairie dog colonies from the transport container and will receive no supplementary care.

The soft release technique is similar to that used in the initial releases in Wyoming. Release cages are situated at the release site, and black-footed ferrets are maintained in the cages for a few days to acclimate to the surroundings. After a few days, a tunnel (tube) is opened to allow the black-footed ferrets free egress and ingress. Food is supplied even after departure in case the black-footed ferrets need to return to a known food supply.

Pre-release conditioning prior to hard release will utilize black-footed ferrets raised from birth in a large, seminatural, enclosed prairie dog colony. In this design, the captive environment should allow a natural expression of genetically influenced behaviors, or, if behaviors are learned, the captive environment should provide appropriate stimuli to learning during the critical period. Presenting juvenile captive animals with stimuli resembling those prevalent in their natural environment may help individuals retain efficient use of adaptive traits and, subsequently, increase post-release survival by reinforcing inherent survival skills in natural ways at natural periods of development.

Other types of release methods also could be tested. The rationale is to compare release techniques that are different from one another but to use techniques that seem reasonable.

Most releases will occur in September and October when the black-footed ferrets are about 18 weeks of age. However, releases during other times of the year remain an option. Once independent of artificial support, all black-footed ferrets will be managed in a similar manner.

Prior to release, ferrets will be vaccinated against disease, as appropriate, including canine distemper, if an effective vaccine is developed for black-footed ferret use (an experimental vaccine is now being tested). In areas other than Badlands National Park, preventative and, where necessary, corrective measures to reduce predation by coyotes (*Canis latrans*), badgers (*Taxidea taxus*), raptors, or other predators may be undertaken in the initial phases of the release but should not be necessary in the long term. Habitat conditions will be monitored continually during the reintroduction effort.

All black-footed ferrets released will be marked (e.g., with Passive Integrated Transponder (PIT) tags or non-toxic paints). A sample of released ferrets may be radio-tagged and their behavior monitored. Other monitoring would include the use of spotlighting, snow surveys, or visual sighting techniques.

Realistically, the Service expects high natural mortality (up to 90 percent) among released black-footed ferrets in the first year of the reintroduction. Despite pre-release conditioning, captive-bred animals will be relatively naive in terms of avoiding predators, securing prey, and withstanding environmental rigors. Mortality is expected to be highest within the first month of release. A realistic goal for the first year would be to work toward enabling a few black-footed ferrets to survive at least 1 month after release with perhaps 10 percent of the released animals surviving the winter.

Intensive studies conducted on the wild Meeteetse population during the 1982–1986 period will provide a natural baseline against which the South Dakota reintroduction effort can be compared to determine how well the reintroduction experiments are proceeding. These baseline data will be supplemented with baseline biological and behavioral data taken from the South Dakota population in the 1960's and 1970's.

If successful, this reintroduction effort is expected to result in the establishment of a free-ranging population of at least 40 adult black-footed ferrets within the Conata Basin/Badlands Reintroduction Area by a target date of 1997 or 1998. The Service will evaluate project progress annually, including sources of mortality. The biological status of the population at this site will be re-evaluated within the first 5 years to determine future management needs. However, this 5-year evaluation will not include an evaluation to determine whether the nonessential experimental designation for the Conata Basin/Badlands population should be changed. The Service anticipates that the nonessential experimental designation for this population will not be changed unless the experiment is determined to be a failure (and this rulemaking is terminated) or until the species is determined to be recovered (and is delisted). Once recovery goals for delisting are met, a proposed rule to delist will be prepared.

The revised Black-footed Ferret Recovery Plan (Recovery Plan) (USFWS 1988) establishes objectives and outlines steps for recovery that, when accomplished, will provide for viable black-footed ferret populations in captivity and within its historical range. Recovery Plan objectives include:

(1) increasing the captive population of black-footed ferrets to a census size of 200 breeding adults by 1991 (this recovery goal subsequently was changed to 240 breeding adults and has been achieved);

(2) establishing a pre-breeding census population of 1,500 free-ranging black-footed ferret breeding adults in 10 or more populations with no fewer than 30 breeding adults in any population by the year 2010; and

(3) encouraging the widest possible distribution of reintroduced black-footed ferret populations.

Status of Reintroduced Population

The Conata Basin/Badlands population of black-footed ferrets will be designated a nonessential experimental population according to the provisions of Section 10(j) of the

Act. The basis for this designation is explained below.

The 1988 Recovery Plan states as one of its goals the development of a captive population containing a minimum of 200 breeding adults. This number was chosen to maintain the maximum genetic variability and to have enough animals to protect the species from a stochastic event; however, it has since been revised to 240 by the Species Survival Plan Group of the American Zoological and Aquarium Association, which manages the captive ferret population. To date, the captive program contains over 300 black-footed ferrets separated geographically into 7 different breeding facilities. With the recovery goal of 240 animals achieved, the captive population can now supply surplus ferrets for reintroduction efforts. As described in the Wyoming final rule (56 FR 41473), the captive population will be the donor population from which surplus ferrets will be taken for reintroduction activities. Without the protection of the donor or captive population, reintroduction efforts could not occur. Therefore, the captive donor population is essential to the recovery of the species by supplying surplus ferrets for reintroduction.

The "experimental population" designation means the reintroduced ferret population will be treated as a threatened species rather than an endangered species. Under section 4(d) of the Act, this designation enables the Service to develop special regulations for management of the population that are less restrictive than the mandatory prohibitions covering endangered species. Thus, the experimental designation allows the management flexibility needed to ensure that reintroduction is compatible with current or planned human activities in the Reintroduction Area and to permit biological manipulation of the population for recovery purposes.

Experimental populations can be determined as either "essential" or "nonessential." An essential experimental population means a population "whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild" (50 CFR 17.80, Subpart H—Experimental Populations). All other experimental populations are treated as "nonessential." For purposes of section 7(a)(2) of the Act, nonessential experimental populations are treated as though they are proposed for listing, except on National Wildlife Refuge System and National Park System lands, where they are treated as a species listed as threatened under the Act.

The captive black-footed ferret population is the primary species population. It has been protected against the threat of extinction from a single catastrophic event by splitting the captive population into seven widely separated subpopulations.

The primary repository of genetic diversity for the species is the approximately 240 adult breeders in the captive population. Animals selected for reintroduction purposes will be as genetically redundant as possible with the captive population. Hence, any loss of reintroduced animals in the Montana experimental population would not significantly impact species survival or the goal of preserving maximum genetic diversity in the species.

All animals lost during the reintroduction attempt can be readily replaced through captive breeding, as demonstrated by the rapid increase in the captive population over the past 6 years. Based on current population dynamics, 100 juvenile ferrets will likely be produced each year in excess of numbers needed to maintain 240 breeding adults in captivity.

The concept of experimental populations and classifying them as nonessential was amended into the Act by Congress in 1982 to make it easier to reintroduce individuals of an endangered or threatened species in areas where there was local opposition to the reintroduction. This is discussed in greater detail later in this document under Issue 1.

The Experimental Population Area does not currently contain ferrets; the proposed nonessential experimental population will include all ferrets taken from captivity and released into the Experimental Population Area and all their progeny.

This reintroduction effort will be the Service's second attempt to reintroduce the black-footed ferret into the wild. The biological and logistical problems of reintroducing and recovering this species that remain to be addressed are significant. However, reintroduction attempts must continue or the captive population may become overly adapted to captivity. In the long run, exclusive captivity likely would increase the risk of ferrets losing important wild survival instincts and reduce the likelihood of successful reintroduction and ultimately recovery of the species.

Virtually all of the habitat in the Conata Basin/Badlands Reintroduction Area is federally owned. The nonessential experimental population designation will facilitate re-establishment of the species in the wild by easing adjacent landowner concerns about protective measures for reintroduced ferrets that might otherwise be taken. This designation will relax the regulations that protect each individual ferret of the reintroduced population, while promoting the conservation of the reintroduced population as a whole. The nonessential designation provides a more flexible management framework for protecting and recovering black-footed ferrets, such that adjacent private landowners may continue their current lifestyles.

First attempts to reintroduce the black-footed ferret into the wild (including the Shirley Basin and South Dakota reintroductions) will place great emphasis on developing and improving reintroduction techniques. This applied research will lay the groundwork for a general reintroduction and management protocol for re-establishing black-footed ferrets in other parts of their historical range, which the Service expects to develop after initial reintroductions have occurred.

As ferret reintroduction efforts progress, the Service will evaluate each potential site to determine whether released ferret populations should be proposed as nonessential experimental or essential experimental, or should retain their endangered status. The Service believes that at least 10 or more wild populations are needed to ensure the immediate survival and downlisting of this species to threatened status (U.S. Fish and Wildlife Service 1988).

Location of Reintroduced Population

Under Section 10(j) of the Act, an experimental population must be wholly separate geographically from nonexperimental populations of the same species. Since the last known member of the original Meeteetse black-footed ferret population was captured for inclusion in the captive population in 1987, no ferrets other than those released in Wyoming in 1991, 1992, and 1993 have been confirmed anywhere in the wild. There is a chance that black-footed ferrets still exist outside the Shirley Basin site. However, survey work for black-footed ferrets in the Experimental Population Area has been extensive because of the interspersion of Federal and tribal lands, and no ferrets have been found. Since 1982, the USFS has conducted over 760 surveys for black-footed ferrets on more than 20,200 hectares (50,000 acres) of prairie dog colonies in the Experimental Population Area. This included prairie dog complexes on both Federal and neighboring private lands when the complex covered both land ownerships.

The NPS has conducted 24 black-footed ferret surveys on over 800

hectares (2,000 acres) of prairie dog colonies since 1988. During the period 1985–1989, the Pine Ridge Indian Reservation undertook a $6.2 million prairie dog control program and treated over 121,000 hectares (300,000 acres) of prairie dog habitat on the reservation. All treated acres were surveyed prior to treatment and part of this acreage lies within the Experimental Population Area.

In addition to actual black-footed ferret surveys, numerous hours have been spent on prairie dog colonies in the Experimental Population Area conducting a variety of research and land management practices. No black-footed ferrets or black-footed ferret sign was observed during these activities. Based on these data, the Service believes that the reintroduced population will not overlap with any wild population of the species. Consequently, barring strong evidence to the contrary (such as a wild black-footed ferret being found in the Experimental Population Area before the first breeding season), with this final rulemaking, the Service administratively determines that wild black-footed ferrets no longer exist in the Experimental Population Area prior to this release.

The Conata Basin/Badlands Reintroduction Area lies on USFS and NPS land in three irregularly shaped areas. The Conata Basin/Badlands Reintroduction Area lies entirely in eastern Pennington County. The Experimental Population Area extends southward into Shannon County and eastward into Jackson County.

The Conata Basin/Badlands Experimental Population Area is that area bounded on the north by Interstate Highway 90 (I–90) beginning where it crosses the Cheyenne River; then east following I–90 to State Highway 73; then south along Highway 73 to Highway 44; then west along Highway 44 to where it meets Bureau of Indian Affairs (BIA) Highway 2 and continues west along BIA Highway 2 to BIA Highway 41; then north along BIA Highway 41 to the Cheyenne River; and then northeast along the Cheyenne River to the point of origin at I–90. While none of these features absolutely preclude black-footed ferret movement, the deterrent they represent, coupled with the distance from the Reintroduction Area, makes it unlikely that a black-footed ferret would emigrate outside the Experimental Population Area. Sufficient black-footed ferret surveys have been conducted in the Experimental Population Area over the last 10 years to indicate that no wild black-footed ferret population exists in the area.

The Conata Basin/Badlands Reintroduction Area will serve as the core recovery area. Prior to the first breeding season following the first releases, all marked black-footed ferrets in the wild in the Experimental Population Area will comprise the nonessential experimental population. During and after the first breeding season, all black-footed ferrets in the wild located east of the Cheyenne River and Bureau of Indian Affairs (BIA) Highway 41, south of I–90, west of State Highway 73, and north of State Highway 44 and BIA Highway 2 in Pennington, Shannon, and Jackson Counties, South Dakota, will comprise the nonessential experimental population. Reintroduced black-footed ferrets are expected to remain in the Conata Basin/Badlands Reintroduction Area because of the prime prairie dog populations present and the limited home range of black-footed ferrets. In the unlikely event that a black-footed ferret leaves the Conata Basin/Badlands Reintroduction Area but stays within the boundaries of the Experimental Population Area, the Service will have the authority to capture the emigrant and place it back into the Reintroduction Area, translocate it to another reintroduction site, or place it in captivity. However, black-footed ferrets on Federal lands in the Experimental Population Area generally will not be removed. If a black-footed ferret is found on private land outside the Reintroduction Area but within the Experimental Population Area, the landowner will be consulted and the black-footed ferret will be removed if the landowner so requests.

All black-footed ferrets released in the Reintroduction Area will be appropriately marked (e.g., with PIT tags, non-toxic paints, or radio collars). In the unlikely event that unmarked black-footed ferrets are found in the Experimental Population Area before the first breeding season following the first fall release, a concerted effort will be initiated to determine the location of the source population. This search will ascertain whether a wild population exists and determine the need for appropriate cooperative conservation actions.

A black-footed ferret occurring outside the Experimental Population Area in South Dakota would initially be considered as endangered but may be captured for genetic testing. If an animal is genetically determined to be from the experimental population, it may be returned to the Reintroduction Area, held in captivity, or released at another reintroduction site.

If an animal is determined to be genetically unrelated to the experimental population, then, under an existing contingency plan, up to nine black-footed ferrets may be taken for use in the captive-breeding program. If a landowner outside the Experimental Population Area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

Management

The Conata Basin/Badlands reintroduction will be undertaken by the Service, the USFS, and the NPS in accordance with the Management Plan (USFWS, USFS, and NPS 1993). This Management Plan will be updated as necessary. General reintroduction protocols were discussed under "Background." Additional considerations pertinent to reintroduction are discussed here.

1. *Monitoring:* Various monitoring efforts are planned over the first 5 years. Prairie dog numbers and distribution will be monitored annually. Monitoring for sylvatic plague will be conducted. Presence of canine distemper will be monitored prior to and during reintroduction. Reintroduced black-footed ferrets and their offspring will be monitored every year using spotlight surveys and/or snow tracking surveys done on foot. Some black-footed ferrets may be radio-collared and all will be marked. Assuming some black-footed ferrets survive the winter and enter the courtship and breeding season the next year, monitoring of breeding success and recruitment will take priority. Black-footed ferret behavior will be monitored throughout the duration of the reintroduction effort.

The Service will request that the USFS's and the NPS's Reintroduction Area supervisor/manager assign a primary black-footed ferret program contact for agencies, private landowners, and public users in the affected area, who will follow up on reports of injured or killed black-footed ferrets and immediately notify the U.S. Fish and Wildlife Field Supervisor, Ecological Services, Pierre, South Dakota, (605) 224–8693. The Field Supervisor will notify the Service's Law Enforcement Division. Discussions and actions to follow up these notifications and collection and determination of the disposition of any live or dead specimens will follow as soon as possible.

The Service will assist in ensuring that governmental agencies and the public are informed about the presence of black-footed ferrets in the affected area via public information, education,

and media programs. These information programs also will address the precautions and care that should be taken in handling sick and injured black-footed ferrets. This will enhance effective treatment and care in handling specimens and, when dead black-footed ferrets are located, will ensure proper preservation of black-footed ferret remains. The finder or investigator will be requested to ensure that evidence pertinent to the specimen is not unnecessarily disturbed.

The Service will require that persons locating dead, injured, or sick black-footed ferrets immediately notify the Field Supervisor, Fish and Wildlife Service, Ecological Services, Pierre, South Dakota.

2. *Disease Considerations:* Reintroduction will be re-evaluated if a significant number of cases of canine distemper are documented in any wild mammal within 6 months prior to the scheduled reintroduction. Samples from coyotes and badgers will be obtained prior to the reintroduction to determine if canine distemper exists in the Reintroduction Area. Visitors and biologists will be discouraged from bringing dogs into the Reintroduction Area. Residents and hunters will be encouraged to report sick wildlife. Efforts are continuing to develop an effective canine distemper vaccine for black-footed ferrets.

Although there is no history of sylvatic plague in the area, sampling for sylvatic plague will occur on a regular basis prior to and during the reintroduction effort.

3. *Genetic Considerations:* While the ultimate genetic goal of the reintroduction program is to establish wild reintroduced populations that embody the maximum level of genetic diversity available from the captive population, individuals used for reintroduction will be chosen so that the level of genetic diversity and demographic stability (e.g., stable age and sex structure) of the captive population is not compromised (reduced) by their removal.

4. *Prairie Dog Management:* Prairie dog management in the Reintroduction Area will be in accordance with the USFS's Prairie Dog Management Plan on USFS land and according to the NPS's Resource Management Plan on NPS land. While both plans may be subject to change, the proposed black-footed ferret reintroduction is based on current versions of these plans, and no change in present plans is sought because of black-footed ferret reintroduction. Prairie dog management on private land is at the discretion of the landowners.

5. *Mortality:* Though efforts will be made to reduce mortality, significant mortality will inevitably occur as captive-raised animals adapt to the wild. Natural mortality from predators, fluctuating food availability, disease, hunting inexperience, etc., will be reduced though predator and prairie dog management, vaccination, supplemental feeding, and pre-release conditioning. Human-caused mortality will be reduced through information and education efforts.

A low level of mortality from "incidental take" (defined by the Act as take that is incidental to, but not the purpose of, an otherwise lawful activity) is expected during the reintroduction program as a result of designing the black-footed ferret reintroduction program to work within the context of traditional land uses in the Reintroduction Area.

Incidental take (e.g., ferret injury or mortality) will be required to be reported immediately to the Service. The Service will investigate each case. If it is determined that a ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, such conduct will not be considered "knowing take" for the purpose of this regulation. Therefore, the Service will not take legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

The biological opinion prepared on the reintroduction anticipates an incidental take level of 12 percent per year. If this level of incidental take is exceeded at any time within any year, the Service, in cooperation with the USFS and the NPS, will conduct an evaluation of incidental take and cooperatively develop and implement with the landowners and land users measures to reduce incidental take.

Even if all released animals were to succumb to natural and human-caused mortality factors, this would not threaten the continued existence of the species, because the captive population is the species' primary population and could readily replace any animals lost in the reintroduction effort. This is consistent with the designation of the reintroduced population as a nonessential experimental population. The choice for wildlife managers is either to risk excess captive black-footed ferrets in reintroduction efforts in order to re-establish the species in the wild, or to keep all black-footed ferrets in relative safety in captivity. The Service believes the long-term benefits to the species of establishing individual wild ferret populations outweighs the relatively minor risks associated with losses of surplus ferrets during reintroduction efforts.

6. *Special Handling:* Under the special regulation [promulgated under authority of Section 4(d) of the Act] that will accompany the experimental population designation, Service employees and agents will be authorized to handle black-footed ferrets for scientific purposes; relocate black-footed ferrets to avoid conflict with human activities; relocate ferrets within the Experimental Population Area to improve ferret survival and recovery prospects; relocate black-footed ferrets to future reintroduction sites; aid animals that are sick, injured, or orphaned; and salvage and dispose of dead ferrets. If a ferret is determined to be unfit to remain in the wild, it will be placed in captivity. The Service will determine the disposition of sick, injured, orphaned, or dead black-footed ferrets.

7. *Coordination with Landowners and Land Management Agencies:* The South Dakota black-footed ferret reintroduction program was discussed with potentially affected State and Federal agencies in the proposed Reintroduction Area. An effort to identify issues and concerns associated with reintroduction into the Conata Basin/Badlands Area was conducted through a Coordinated Resource Management process. A Local Level Committee (LLC) was selected consisting of Federal Agencies, State agencies, environmental interests, grazing and land-use interests, and local landowners to discuss concerns about ferret reintroduction over a period of 16 months.

The LLC did not reach a consensus on a plan for black-footed ferret restoration. However, the issues raised during the six LLC meetings provided valuable input to the Federal agencies responsible for developing the Environmental Impact Statement (EIS). The LLC members also provided their individual comments to the Governor of South Dakota, who indicated in letters to the Secretaries of Agriculture and Interior his willingness to support a black-footed ferret restoration program, provided property rights of private individuals could be protected.

8. *Potential for Conflict with Grazing and Recreational Activities:* USFS lands in the Conata Basin/Badlands Reintroduction Area are included in grazing allotments. Conflicts between grazing and black-footed ferret management are not anticipated on USFS lands as current USFS prairie dog management plans have assigned reduced Animal Unit Months to areas

that are designated untreated areas for prairie dogs. No additional grazing restrictions will be placed on USFS lands with grazing allotments in the Conata Basin/Badlands Reintroduction Area as a result of black-footed ferret reintroduction. No commercial grazing occurs on NPS land.

No restrictions in addition to existing requirements will be placed on landowners regarding prairie dog control on private lands in the Experimental Population Area.

Recreational activities currently practiced in the Conata Basin/Badlands Reintroduction Area (e.g., antelope hunting, prairie dog shooting, rabbit hunting using greyhound dogs, furbearer or predator trapping, and off-road vehicle recreation) are either unlikely to impact black-footed ferrets or, if negative impacts are demonstrated, will be managed to avoid or minimize such impacts.

9. *Protection of Black-Footed Ferrets:* Released black-footed ferrets will initially need protection from natural sources of mortality (predators, disease, inadequate prey, etc.) and from human-caused sources of mortality. Natural mortality will be reduced through pre-release conditioning, vaccination, predator control, management of prairie dog populations, etc. Human-caused mortality will be minimized by placing black-footed ferrets in an area with low human population density; by working with landowners, Federal land managers, and recreationists to develop means for conducting existing and planned activities in a manner compatible with ferret recovery; and by conferring with developers on proposed actions and providing recommendations that will reduce likely adverse impacts to ferrets.

A final biological opinion was prepared on this action to reintroduce black-footed ferrets into the Experimental Population Area; it concluded that this action is not likely to jeopardize any listed species.

10. *Public Awareness and Cooperation:* Extensive information sharing about the program and the species, via educational efforts targeted toward the public in the region and nationally, will enhance public awareness of this species and this reintroduction.

11. *Overall:* The designation of the Conata Basin/Badlands population as a nonessential experimental population and its associated management flexibility should encourage local acceptance of and cooperation with the reintroduction effort. The Service considers the nonessential experimental population designation, the accompanying special rule, and the Management Plan necessary to obtain the cooperation of landowners, agencies, citizens, grazing interests, and recreational interests in the area.

12. *Effective Date:* The provisions of 5 U.S.C. 533 provide that at least 30 days shall be allowed before a rule becomes effective unless an agency has good reason to make it effective sooner. It is essential to the success of the reintroduction effort that releases commence in the fall of the year, when wild young ferrets typically would become independent of natal care and disperse. The Service plans to begin initial ferret releases in the South Dakota Reintroduction Area in early September 1994. Therefore, this rule is effective immediately upon publication in the **Federal Register**.

Summary of Comments and Recommendations

In the May 19, 1993, proposed rule and associated notifications, all interested parties were invited to submit comments or recommendations concerning any aspect of the proposed rule that might contribute to the development of a final rule. On May 21, 1993, the Service mailed copies of the proposed rule, the Draft Environmental Impact Statement (DEIS), and a draft management plan to appropriate Federal Agencies, tribal governments, State agencies, county governments, business and conservation organizations, and other interested parties. Approximately 300 of these packets were mailed.

Legal notices inviting public comment were published in the Rapid City Journal on June 5, 1993, and the Sioux Falls Argus Leader on June 4, 1993. In early May and again in early June, news releases were mailed to over 200 media outlets in South Dakota, including newspapers, television stations, and radio stations. Two public hearings on the proposed rule were held. On June 9, 1993, a hearing was held in Pierre, South Dakota, and on June 10, 1993, a hearing was held in Rapid City, South Dakota.

The Service received 54 letters and 28 oral comments on the entire proposed rule and DEIS package. Only 13 of the letters were determined to be direct comments on the proposed rule.

Most environmental groups and some individuals pointed out the same concern—that is, that the designation of the captive population as the essential one is incorrect and that some portion of the Reintroduction Area should be designated as an essential population. One commenter supported the nonessential designation.

Two different commenters made numerous comments on the proposed rule. They felt that the experimental population option was used too broadly; it should be used on private land only and not on public land. They felt no evidence was presented that section 7 and section 9 of the Act were impediments to black-footed ferret releases. They felt that the proposed rule could be construed to mean that the Service would invite or condone indiscriminate killing of black-footed ferrets and wanted no hunting, trapping, or off-road vehicle (ORV) use in the Reintroduction Area.

One commenter objected to provisions that would allow landowners to request removal of black-footed ferrets without a clear demonstration of harm.

One commenter questioned the need for greater management flexibility because they felt that the return of the black-footed ferret does not present any risk to land use. This commenter also saw no need to reduce the requirements of section 7 and section 9 of the Act from the proposal, thought the proposed rule was biased toward protecting human activities and that management priority should be placed on protecting black-footed ferrets, and thought that captive breeding efforts should be reduced in favor of placing priority on wild populations.

Two commenters questioned if a list of parameters had been developed that would move the program from a nonessential to essential reintroduction. They also were concerned that the South Dakota reintroduction was remarkably similar to the Montana reintroduction and suggested that a national plan be developed.

One commenter thought it was unclear whether the incidental take allowance by nonagency persons within the Experimental Population Area includes take occurring in the Reintroduction Area.

Comments of a similar nature or point are grouped into a number of general issues. These issues, and the Service's response to each, are discussed below:

Issue 1: Should the reintroduced population be designated as an essential experimental population as opposed to a nonessential experimental population?

Response: The Service's rationale for designating the South Dakota ferret reintroduction as a nonessential experimental population was explained above under "Status of Reintroduced Population." Establishment of a wild population in the Experimental Population Area is not essential to the continued existence of the species in the wild. The donor captive population,

which is the population whose loss would appreciably affect the likelihood of survival of the species in the wild, is secure and other reintroduction sites are being identified and readied.

The captive population is the primary species population. It has been protected against the threat of extinction from a single catastrophic event through splitting the captive population into seven widely separated subpopulations. Hence, loss of the experimental population would not threaten the species' survival.

The primary repository of genetic diversity for the species is the 240 adult breeders in the captive population. Animals selected for reintroduction purposes will be as genetically redundant as possible with the captive population; hence, any loss of reintroduced animals in this experimental population will not significantly impact the goal of preserving maximum genetic diversity in the species.

All animals lost during the reintroduction attempt can readily be replaced through captive breeding, as demonstrated by the rapid increase in the captive population over the past 6 years. Based on current population dynamics, 100 juvenile ferrets will likely be produced each year in excess of numbers needed to maintain 240 breeding adults in captivity.

There are no known populations of ferrets in the wild except for the nonessential experimental population reintroduced into the Shirley Basin area in Wyoming. The only other ferrets known to exist are in captive breeding facilities. Because the breeding program has been so successful, there are more ferrets in captivity than are needed for the breeding program or for ensuring the survival of the species. Ferrets that are the subject of this rule are surplus animals that the Service has determined are not needed for these purposes. Having a sufficient number of black-footed ferrets in the breeding program means that the Service will be able to continue to produce surplus ferrets for reintroductions and thus bring about the survival of the species in the wild.

Consequently, the captive breeding population is the population that is essential to the survival of the species in the wild. The nonessential designation is based on the Service's conclusion that those ferrets to be removed from captivity and reintroduced into South Dakota are not needed for the survival of the species in the wild. If the released animals are lost, they can be replaced with other black-footed ferrets produced in captivity.

The Service's position is supported by the preamble to the final rule for establishing experimental populations published in the **Federal Register** on August 27, 1984 (49 FR 33885). It explains that the organisms that will be reclassified as experimental are those which are to be removed from an existent source or donor population. Additionally, one commenter on the proposed rule that preceded the final rule on experimental populations stated that no species classified as endangered could have populations biologically nonessential to their survival. In its final rule, the Service disagreed with this comment and stated "* * * there can be situations where the status of the extant population is such that individuals can be removed to provide a donor source for reintroduction without creating adverse impacts upon the parent population. This is especially true if the captive propagation efforts are providing individuals for release into the wild."

Furthermore, the Service referred to the Conference Report, which is especially significant because the definition of "essential population" in the experimental population final rule is virtually identical to the language in the Conference Report. Congress explained, "* * * (T)he level of reduction necessary to constitute 'essentiality' is expected to vary among listed species and, in most cases, experimental populations will not be essential" [H.R. Conf. Rep. No. 835, 97th Cong., 2d Sess., 34 (1982)].

The Senate report explains that the special regulations designating experimental populations are to be designed to address the "particular needs" of each experimental population and that the Secretary is "granted broad flexibility" in promulgating the special regulations [S. Rep. No. 97–418, 97th Cong., 2d Sess. 8 (1982)].

Issue 2: Should the reintroduced population be fully endangered rather than experimental?

Response: The Service has not decided that black-footed ferrets in captivity are the only ferrets that will ever retain endangered status under the Act. It is important to recognize that one of the reasons Congress amended the Act in 1982 was to provide for experimental populations. The House Report is instructive on this point. It states that reintroduction efforts had encountered strong opposition from the states and areas where species were to be reintroduced. Opponents were concerned that, if reintroduced species were fully protected under the Act, then conflicts with existing uses would result and new development would be curtailed. Congress amended the Act to mitigate and alleviate such fears.

Because of the flexibility provided by Congress as discussed under Issue 1, the Service maintains that it has the authority under the Act to designate this population as experimental if such action will further the conservation of the species, and if the decision is based on the best scientific and commercial data available.

Issue 3: Should the proposed reintroduction provide greater protection for black-footed ferrets from impacts such as grazing, trapping, prairie dog hunting, and oil and gas development than is proposed?

Response: The Service, working with the NPS and the USFS, developed the Management Plan that will guide how these types of activities are carried out within the Reintroduction Area. The Service believes the Management Plan provides adequate protection from these activities. Both the NPS and the USFS have authority to restrict access if additional protection proves necessary.

Issue 4: Should black-footed ferrets be removed from private land in the Experimental Population Area without clear demonstration of harm?

Response: The Reintroduction Area has been identified as an adequate area for a black-footed ferret population to survive. The surrounding Experimental Population Area has been identified as an area that acts as a buffer zone. The purpose of the nonessential experimental population designation was to alleviate local landowner concerns over restrictions that would otherwise occur with the presence of black-footed ferrets. Removal of a black-footed ferret at the landowner's request will allow for the relocation of the animal into high quality habitat areas in the Reintroduction Area, and also would keep released ferrets concentrated in the Reintroduction Area, which may aid in the recovery of the species. The Service does not view the removal of black-footed ferrets from private lands as detrimental to the reintroduction effort.

Issue 5: Is there a need for less management flexibility than that described in the proposed rule (e.g., no reduction in section 7 and section 9 responsibilities)?

Response: Designation of an experimental population provides flexibility in management outside the Reintroduction Area as well as within the Reintroduction Area. While the experimental designation will help relieve some restrictions on landowners relating to the presence of black-footed ferrets, the designation also is important to biologists by allowing them to

directly manage released ferrets (e.g., by capture and relocation), which will benefit the reintroduction effort and the species. The nonessential experimental designation does change the status of black-footed ferrets with respect to section 7 and section 9 of the Act. Nevertheless, ferrets under this designation still retain significant protections under the Act, and the Service does not believe an experimental designation will be detrimental to the establishment of a sustained black-footed ferret population.

Issue 6: Is there a list of parameters that would change the status of black-footed ferrets from nonessential to essential? Should a national plan be developed?

Response: Once this final rule goes into effect, changing the nonessential experimental designation of the South Dakota ferret population would require a new rulemaking process, which would include a proposed rule, a public comment period, public meetings, National Environmental Policy Act compliance, and other documentation before a final rule to change the designation could be published. Under the experimental population regulations (50 CFR 17 Subpart H), any rule designating an experimental population must provide "* * * a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species." The 5-year evaluation noted in section 17.84(g)(10) of the proposed rule is intended to be a milestone in this required periodic review and evaluation process, and will be a review of the biological success of the reintroduction effort. If determined to be less than successful, the Service, USFS, and NPS will modify the reintroduction protocol and/or the strategies within the Management Plan to improve ferret survival and/or recruitment, with the involvement of affected landowners and land managers. If the experiment is extremely unsuccessful, the Service, USFS, and NPS may consider a temporary hold on releasing ferrets into the Reintroduction Area until better release or management techniques are developed. The 5-year evaluation will not include an evaluation to determine whether the population should be reclassified.

The Service does not foresee any likely situation, except for eventual delisting of the species, that would call for altering the nonessential experimental status of the South Dakota ferret population.

However, the Service is working toward development of a national strategy that will address the goals and objectives outlined in the Black-footed Ferret Recovery Plan developed in 1978 and revised in 1988.

Issue 7: Is clarification needed on whether incidental take allowed under the special rule would include take occurring in the Reintroduction Area?

Response: The take statement which appears in Section 17.84(g)(5) applies to the Experimental Population Area as defined by the rule; this includes the Reintroduction Area. The Reintroduction Area is entirely on Federal land, and Federal land management agencies within the area have authority over land-use practices on their lands and have agreed to abide by the Management Plan. Thus, incidental take allowed by the special rule will apply to the Reintroduction Area but will be regulated by adequate Federal authority.

Issue 8: Were the boundaries of the Experimental Population Area appropriate—that is, why was a larger area not considered for the Reintroduction Area?

Response: Black-footed ferrets were historically found throughout western South Dakota. The Experimental Population Area boundaries were drawn to include all potential black-footed ferret habitat (prairie dog colonies) within the Conata Basin/Badlands Prairie Dog Complex—that is, prairie dog colonies within 7 kilometers of another colony (and that were not being treated with rodenticides). Black-footed ferrets traveling beyond the Reintroduction Area will be exposed to areas of less suitable habitat. The proposed Reintroduction Area, according to available modeling information, contains sufficient acreage and densities of prairie dogs to support a viable population of black-footed ferrets for a 100-year period.

Issue 9: How does the Service plan to address impacts on long-term black-footed ferret viability?

Response: The Service has addressed the long-term viability of ferrets in the wild through recovery goals and objectives described in the 1988 revised Black-footed Ferret Recovery Plan. This plan identifies objectives that must be met to downlist the species to threatened, which in turn would ensure the long-term viability of the species in the wild. The revised recovery plan reflects current information and recovery objectives, and outlines steps for recovery that, when accomplished, will provide for viable black-footed ferret populations in captivity and within its historical range. These objectives include:

(1) Increasing the captive population of black-footed ferrets to a census size of 200 breeding adults by 1991 (this goal was subsequently changed to 240 and has been achieved);

(2) Establishing a pre-breeding census population of 1,500 free ranging black-footed ferret breeding adults in 10 or more populations with no fewer than 30 breeding adults in any population by the year 2010; and

(3) Encouraging the widest possible distribution of reintroduced black-footed ferret populations.

It is the Service's opinion that the Recovery Plan will continue to be revised to reflect future requirements and direction to ensure recovery of the black-footed ferret in the wild. In addition, the Service plans to develop a national strategy for implementing the ferret reintroduction program, based in part on initial reintroduction efforts. This strategy would outline the specific methods and means necessary to achieve recovery objectives cited in the Recovery Plan.

National Environmental Policy Act

A final EIS, as defined under the authority of the National Environmental Policy Act of 1969, has been prepared and is available from the Service offices identified in the **ADDRESSES** section.

Required Determinations

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The rule will not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Effective Date

The provisions of 5 U.S.C. provide for no less that 30 days for a rule to become effective unless an agency, for good reason, makes it sooner. Due to the need to release black-footed ferrets to the wild immediately in order to allow them as much time as possible to become established before winter sets in, this final rule is effective immediately.

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Authors

The principal authors of this rule are Douglas Searls, South Dakota Field Office and Ronald Naten, Regional Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

Part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by revising the existing two entries for the "Ferret, black-footed" under "MAMMALS" to read as shown below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Ferret, black-footed	*Mustela nigripes*	Western U.S.A., Western Canada.	Entire, except where listed as an experimental population below.	E	1, 3, 433, 543	NA	NA
Do	....do	....do	U.S.A. (specified portions of Wyoming and South Dakota).	XN	433, 543	NA	17.84(g)
*	*	*	*	*	*		*

3. Section 17.84 is amended by revising the text of paragraph (g) to read as follows:

§ 17.84 Special rules—vertebrates

* * * * *

(g) Black-footed ferret (*Mustela nigripes*)

(1) The black-footed ferret populations identified in paragraphs (g)(9)(i) and (g)(9)(ii) of this section are nonessential experimental populations. Each of these populations will be managed in accordance with their respective management plans.

(2) No person may take this species in the wild in the experimental population areas except as provided in paragraphs (g)(3), (4), (5), and (10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under § 17.32 may take black-footed ferrets in the wild in the experimental population areas.

(4) Any employee or agent of the Service or appropriate State wildlife agency, who is designated for such purposes, when acting in the course of official duties, may take a black-footed ferret from the wild in the experimental population areas if such action is necessary:

(i) For scientific purposes;

(ii) To relocate a ferret to avoid conflict with human activities;

(iii) To relocate a ferret that has moved outside the Reintroduction Area when removal is necessary to protect the ferret, or is requested by an affected landowner or land manager, or whose removal is requested pursuant to paragraph (g)(12) of this section;

(iv) To relocate ferrets within the experimental population areas to improve ferret survival and recovery prospects;

(v) To relocate ferrets from the experimental population areas into other ferret reintroduction areas or captivity;

(vi) To aid a sick, injured, or orphaned animal; or

(vii) To salvage a dead specimen for scientific purposes.

(5) A person may take a ferret in the wild within the experimental population areas provided such take is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity and if such ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct. Such conduct will not be considered "knowing take" for purposes of this regulation, and the Service will not take legal action for such conduct. However, knowing take will be referred to the appropriate authorities for prosecution.

(6) Any taking pursuant to paragraphs (g)(3), (4) (vi) and (vii), and (5) of this section must be reported immediately to the appropriate Service Field Supervisor, who will determine the disposition of any live or dead specimens.

(i) Such taking in the Shirley Basin/Medicine Bow experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Cheyenne, Wyoming (telephone: 307/772–2374).

(ii) Such taking in the Conata Basin/Badlands experimental population area must be reported to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Pierre, South Dakota (telephone: 605/224–8693).

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any ferret or part thereof from the experimental populations taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraphs (g) (2) and (7) of this section.

(9) The sites for reintroduction of black-footed ferrets are within the historical range of the species.

(i) The Shirley Basin/Medicine Bow Management Area is shown on the attached map and will be considered the core recovery area for the species in southeastern Wyoming. The boundaries of the nonessential experimental population will be that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany Counties (see Wyoming map). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will comprise the nonessential experimental population thereafter.

(ii) The Conata Basin/Badlands Reintroduction Area is shown on the attached map for South Dakota and will be considered the core recovery area for this species in southwestern South Dakota. The boundaries of the nonessential experimental population area will be north of State Highway 44 and BIA Highway 2 east of the Cheyenne River and BIA Highway 41, south of I–90, and west of State Highway 73 within Pennington, Shannon, and Jackson Counties, South Dakota. Any black-footed ferret found in the wild within these boundaries will be considered part of the nonessential experimental population after the first breeding season following the first year of releases of black-footed ferrets in the Reintroduction Area. A black-footed ferret occurring outside the experimental population area in South Dakota would initially be considered as endangered but may be captured for genetic testing. Disposition of the captured animal may take the following actions if necessary:

(A) If an animal is genetically determined to have originated from the experimental population, it may be returned to the Reintroduction Area or to a captive facility.

(B) If an animal is determined to be genetically unrelated to the experimental population, then under an existing contingency plan, up to nine black-footed ferrets may be taken for use in the captive-breeding program. If a landowner outside the experimental population area wishes to retain black-footed ferrets on his property, a conservation agreement or easement may be arranged with the landowner.

(10) The reintroduced populations will be continually monitored during the life of the project, including the use of radio-telemetry and other remote sensing devices, as appropriate. All released animals will be vaccinated against diseases prevalent in mustelids, as appropriate, prior to release. Any animal which is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or the Department or their agents and given appropriate care. Such an animal may be released back to its respective reintroduction area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

(11) The status of each experimental population will be re-evaluated within the first 5 years after the first year of release of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of individuals released into the area, as well as the overall health of the experimental population and the prairie dog ecosystem in the above described areas. Once recovery goals are met for delisting the species, a rule will be proposed to address delisting.

(12) This 5-year evaluation will not include a re-evaluation of the "nonessential experimental" designation for these populations. The Service does not foresee any likely situation which would call for altering the nonessential experimental status of any population. Should any such alteration prove necessary and it results in a substantial modification to black-footed ferret management on non-Federal lands, any private landowner who consented to the introduction of black-footed ferrets on his lands will be permitted to terminate his consent and the ferrets will be, at his request, relocated pursuant to paragraph (g)(4)(iii) of this rule.

* * * * *

4. Section 17.84 is amended by adding a map to follow the existing map at the end of paragraph (g).

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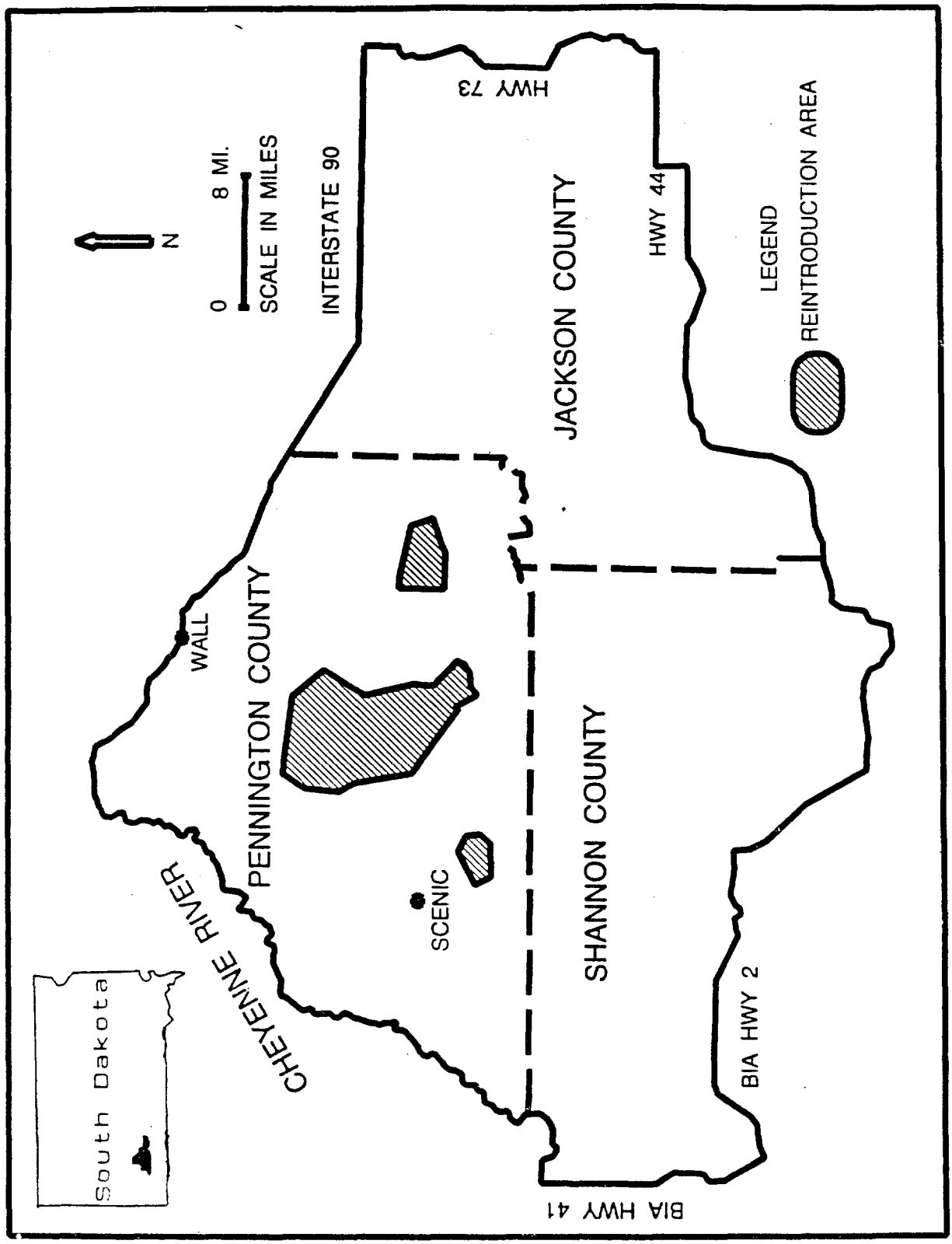

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Dated: **August 9, 1994.**

Robert P. Davison,

Acting Assistant Secretary, Fish, Wildlife and Parks.

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